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10  
11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
13

14 ELECTRIC SOLIDUS, INC. d/b/a  
SWAN BITCOIN, a Delaware  
15 corporation,,  
16

16 Plaintiff,

17 v.

18 PROTON MANAGEMENT LTD., a  
British Virgin Islands corporation;  
19 THOMAS PATRICK FURLONG;  
ILIOS CORP., a California corporation;  
20 MICHAEL ALEXANDER HOLMES;  
RAFAEL DIAS MONTELEONE;  
21 SANTHIRAN NAIDOO; ENRIQUE  
ROMUALDEZ; and LUCAS  
22 VASCONCELOS,  
23

23 Defendants.  
24  
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Case No. 2:24-cv-8280

**DEFENDANT PROTON'S SPECIAL  
APPEARANCE TO OPPOSE  
PLAINTIFF'S *EX PARTE*  
APPLICATIONS FOR A  
TEMPORARY RESTRAINING  
ORDER WITHOUT NOTICE, AN  
ORDER THAT PLAINTIFFS MAY  
SERVE DEFENDANTS VIA EMAIL  
AND AN ORDER FOR EXPEDITED  
DISCOVERY**

Judge: Hon. Wesley L. Hsu

Complaint filed: September 27, 2024

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1 Defendant Proton Management Ltd. (“Proton”), which has not been served  
2 with the Complaint, hereby specially appears<sup>1</sup> to oppose Plaintiff Electric Solidus,  
3 Inc. d/b/a Swan Bitcoin’s (“Swan”) ex parte applications for a temporary restraining  
4 order (“TRO”), an order to serve Proton and its co-defendants via email, and an  
5 order to take expedited discovery.

6 **I. INTRODUCTION**

7 Plaintiff Swan’s ex parte applications for a TRO is fatally flawed for several  
8 reasons. As more fully set forth below, Swan’s filings appear to be nothing more  
9 than “litigation by ambush” to disparage its former employees and contractors in  
10 order to gain leverage in its dispute with Tether, a respected cryptocurrency  
11 institution that invested in Swan and separately provided all the funding for a  
12 separate an entity called 2040 Energy Ltd. (“2040 Energy”) in which Swan owns a  
13 minority stake, according to the allegations in the Complaint. Amidst increasing  
14 mismanagement by Swan’s executive team, which negatively impacted 2040’s  
15 ongoing operations and future growth, resulting in mass layoffs, the Individual  
16 Defendants<sup>2</sup> resigned from Swan in August 2024. Thereafter, 2040 Energy engaged  
17 Proton, a British Virgin Islands Business Company with its headquarters in Tortola  
18 British Virgin Islands, to temporarily maintain the operational and administrative  
19 \_\_\_\_\_

20 <sup>1</sup> A defendant does not waive service or jurisdiction by appearing to oppose an ex  
21 parte temporary restraining order (TRO). *Fourte Int’l Ltd. BVI v. Pin Shine Indus.*  
22 *Co*, 2018 U.S. Dist. LEXIS 62367, \*4-5 (S.D. Cal.) (defendants did not waive any  
23 arguments relating to insufficient service by appearing to dispute the methods of  
24 service); *Johnson v. Comm’n on Presidential Debates*, No. SACV-12-1600 FMO  
25 (ANx), 2014 WL 12597805, at \*4 (C.D. Cal. Jan. 6, 2014) (jurisdiction not waived  
26 when defendant filed a response to a TRO application, specifically noting that it  
27 reserved the right to contest personal jurisdiction, and then timely raised the  
28 personal jurisdiction issue in its first motion or responsive pleading).

<sup>2</sup> The Individual Defendants are Defendants Thomas Patrick Furlong (“Furlong”),  
Michael Alexander Holmes (“Holmes”), Ilios Corporation (“Ilios”), Rafael Dias  
Monteleone (“Monteleone”), Santhiran Naidoo (“Naidoo”), Enrique Romualdez  
 (“Romualdez”), and Lucas Vasconcelos (“Vasconcelos”).

1 functions of 2040 Energy, in which Swan owns a minority stake. Thus, even if there  
2 were jurisdiction over Proton (there is none) Swan has suffered no damage by  
3 Proton's activities. Additionally, while Proton adamantly denies that it uses any of  
4 Swan's supposed proprietary information or trade secrets, it is highly questionable  
5 whether *any* of the information identified in Swan's complaint actually belongs to  
6 Swan as opposed to 2040 Energy, or even constitutes proprietary information and/or  
7 trade secrets.

8         Nevertheless, despite knowing of Proton's engagement to perform 2040  
9 Energy's operational functions as early as August 13, 2024, Swan negotiated its  
10 dispute with Tether for more than six weeks. In an apparent attempt to gain  
11 leverage in those negotiations, has now filed this suit and ex parte applications  
12 against Proton in this Court, which does not have personal jurisdiction over Proton,  
13 and without any attempt to serve the complaint or any intention to even notify the  
14 defendants. The Court should deny Swan's applications because there is no  
15 personal jurisdiction over Proton. Additionally, Swan has not established that email  
16 service is necessary here.

17         Swan does not have a mining business of its own. Rather, as Swan admits in  
18 its complaint and publicly, what Swan has called its mining business is really just  
19 the separate entity called 2040 Energy, which is fully funded by Tether, according to  
20 Swan's own complaint. 2040 Energy *is not* controlled by Swan, although Swan  
21 maintains a minority stake in the business. Through the work and ingenuity of the  
22 Individual Defendants, 2040 Energy successfully developed mining operations.

23         However, unrelated to the 2040 entity and its operations, Swan's financial  
24 position was so precarious that it had to conduct a large round of layoffs in July  
25 2024. As further admitted in the Complaint, the Individual Defendants left Swan in  
26 early August and began working for Proton, which was subsequently engaged to  
27 continue the 2040 Energy operations. That is, Proton is continuing to preserve and  
28 enhance the value of 2040 Energy, in which Swan has a minority financial stake.

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1 Far from damaging Swan, Proton is enhancing the value of its minority stake in  
2 2040 Energy.

3 While the questionable damages and ownership of the information identified  
4 in the complaint raise serious doubts as to the propriety of granting injunctive relief  
5 without full opportunity to address these issues, as an initial matter, Swan's ex parte  
6 applications should be denied in their entirety because this Court lacks personal  
7 jurisdiction over Proton—which is incorporated in the British Virgin Islands. Proton  
8 intends to file a motion to dismiss for lack of personal jurisdiction upon being  
9 properly served with the Complaint. At minimum, this Court should withhold any  
10 ruling on Swan's application for a TRO until after jurisdiction is established.  
11 Moreover, this Court should not grant Swan's request for an order to serve Proton  
12 via email because the request is premature and is not necessitated by the facts and  
13 circumstances of this case.

## 14 **II. FACTUAL & PROCEDURAL BACKGROUND**

15 According to the allegations in the Complaint, which Proton does not admit,  
16 Swan and Tether created 2040 Energy in 2023. (¶¶ 58-59.)<sup>3</sup> According to the  
17 Complaint, Tether provided all of the funding for 2040 Energy, while Swan  
18 employees and contractors operated the mining operations, with Swan maintaining a  
19 minority stake in the business (¶¶ 60, 61, 107.)

20 Amidst financing difficulties, and layoffs (Trigg Decl., Ex. A), the individual  
21 employees and contractors supporting the 2040 Energy operations resigned from  
22 Swan in early August 2024. On August 13, 2024, after previously telling Swan it  
23 was in breach of its obligations to 2040 Energy and providing a period to cure the  
24 breach, Tether informed Swan that Proton Management Ltd. would continue the  
25 2040 Energy operational and administrative functions through the individuals that  
26 left Swan. (¶ 104.) At that time Swan did not contact Proton or the Individual  
27

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28 <sup>3</sup> All ¶ references are to the Complaint.

1 Defendants to claim that they were engaging in any wrongdoing. Instead, Swan  
2 engaged in negotiations with Tether regarding their dispute *for more than six*  
3 *weeks*. (¶¶ 102-112, 115-116.)

4 Then, on September 25, 2024, Swan filed its Complaint and ex parte  
5 applications for a TRO to restrain Proton and its co-defendants from using alleged  
6 confidential and proprietary information, compel Proton's co-defendants to return  
7 Swan laptops, and preserve relevant evidence. The applications also sought an order  
8 allowing for service of the Complaint via email and to take expedited discovery.  
9 Swan apparently did not intend to even inform any of the defendants of the  
10 Complaint or its ex parte applications, as it sought to have the applications granted  
11 without notice.<sup>4</sup>

12 However, once the case was assigned to Hon. Wesley L. Hsu, whose standing  
13 order requires notice of ex parte applications, the next day, on September 26, 2024,  
14 Swan sent an email to Proton to notify it about the Complaint and pending ex parte  
15 applications. (Dkt #18.) **This was the first contact Swan made with Proton**  
16 **regarding Swan's claims despite possessing Proton's contact information.**  
17 (Trigg Decl. ¶ 2.) Before sending the email on September 26, Swan never informed  
18 Proton about the pending litigation, never asked it to accept service of the  
19 Complaint, never sent a demand letter regarding the alleged misappropriation of  
20 confidential information and intellectual property, never made a demand that Proton  
21 preserve documents, and never discussed participating in expedited discovery. (*Id.*)

22 On September 26, 2024, counsel for Proton contacted counsel for Swan to  
23 inform her that Bergeson LLP would be representing defendants for the purpose of  
24

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25  
26 <sup>4</sup> In its haste to file the documents on September 25, 2024, Swan applied insufficient  
27 redactions such that purportedly confidential information was clearly visible under  
28 the attempted redactions, and Swan also failed to redact the personal addresses and  
emails of the Individual Defendants. Swan has since corrected those mistakes in the  
docket.

1 specially appearing to oppose the ex parte applications. (Trigg Decl. ¶ 3.) On the  
2 call, counsel for Swan stated that Swan had intended to proceed without notice, but  
3 when the case was assigned to Judge Hsu, whose standing order requires notice,  
4 Swan decided to send defendants email notice of its court filings. (*Id.*)

### 5 **III. ARGUMENT**

#### 6 **A. This Court lacks specific personal jurisdiction over Proton and** 7 **therefore may not issue the ex parte TRO.**

8 An ex parte application for a TRO cannot be used against a party over whom  
9 the court has no jurisdiction. *See Zepeda v. U.S. Immigr. & Naturalization Serv.*,  
10 753 F.2d 719, 727 (9th Cir. 1983); *see also Viral DRM LLC v. Onyshchuk*, No.  
11 3:23-cv-04300-JSC, 2024 U.S. Dist. LEXIS 8726, at \*1 (N.D. Cal. Jan. 17, 2024)  
12 (denying motion for preliminary injunction because the plaintiff “failed to meet its  
13 burden of demonstrating the Court has personal jurisdiction over [the d]efendants”).  
14 And, regardless, if the application is made on an ex parte basis, it is well-established  
15 that a federal court must have both personal jurisdiction over the parties and subject  
16 matter jurisdiction over the claim to issue an injunction, including a TRO. Without  
17 such jurisdiction, a court is powerless to proceed with any adjudication, including  
18 granting injunctive relief. *See Direct Mail Specialists, Inc. v. Eclat Computerized*  
19 *Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (“A federal court does not have  
20 jurisdiction over a defendant unless the defendant has been served properly under  
21 Fed. R. Civ. P. 4.”); *Zepeda v. United States Immigration & Nat. Serv.*, 753 F.2d  
22 719, 727 (9th Cir. 1985) (“A federal court may issue an injunction if it has personal  
23 jurisdiction over the parties and subject matter jurisdiction over the claim; it may not  
24 attempt to determine the rights of persons not before the court.”) In *Thomas v.*  
25 *Cadence Capital Invs. LLC*, No. 2:22-cv-07944-SPG-SK, 2022 U.S. Dist. LEXIS  
26 240203 (C.D. Cal. Nov. 3, 2022), the court denied the plaintiff’s ex parte application  
27 for a TRO because it lacked jurisdiction over the party against whom the plaintiff  
28 sought the injunction. *See also Folke v. City of Los Angeles*, No. 2:21-cv-03038-

1 SPE-E, 2022 U.S. Dist. LEXIS 235498, at \*5-6 (C.D. Cal. Aug. 11, 2022) (the court  
2 denied a TRO application due to lack of jurisdiction over the defendant); *United*  
3 *States Olympic Comm. v. Does*, No. C 08-03514 JSW, 2008 U.S. Dist. LEXIS  
4 60498, at \*1-2 (N.D. Cal. July 25, 2008) (same).

5 The Ninth Circuit has established a three-prong test for analyzing a claim of  
6 specific personal jurisdiction:

7 (1) the non-resident defendant must purposefully direct his activities or  
8 consummate some transaction with the forum or resident thereof; or perform some  
9 act by which he purposefully avails himself of the privilege of conducting activities  
in the forum, thereby invoking the benefits and protections of its laws;

10 (2) the claim must be one which arises out of or relates to the defendant's  
11 forum-related activities; and

12 (3) the exercise of jurisdiction must comport with fair play and substantial  
13 justice, i.e. it must be reasonable.

14 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)  
15 (citing *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)). To establish whether a  
16 defendant “purposefully directed” his activities toward the forum state, defendant  
17 must have (1) committed an intentional act, (2) expressly aimed at the forum state,  
18 (3) causing harm that the defendant knows is likely to be suffered in the forum state.  
19 *Will Co. v. Ka Yeung Lee*, 47 F.4th 917, 922 (9th Cir. 2022) (quoting  
20 *Schwarzenegger*, 374 F.3d at 803)).

21 Personal jurisdiction over a foreign defendant cannot be based solely on bare  
22 allegations in the complaint. *Amba Mktg. Sys. Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784,  
23 787 (9th Cir. 1977). The plaintiff bears the burden of establishing jurisdiction and  
24 must make a prima facie showing of jurisdictional facts. *Licea v. Caraway Home*  
25 *Inc.*, 655 F. Supp. 3d 954, 961-962 (C.D. Cal. 2023). Mere allegations are  
26 insufficient if contradicted by specific denials from the defendant. *See Getz v.*  
27 *Boeing Co.*, 654 F.3d 852, 860 (9th Cir. 2011) (“speculative allegations of  
28 attenuated jurisdictional contacts” will not support jurisdiction). Personal

1 jurisdiction claims based on attenuated and speculative allegations do not warrant  
2 jurisdictional discovery. *Id.*; *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1160 (9th  
3 Cir. 2006).

4 Here, Proton has not yet been served with the Complaint, and therefore this  
5 Court lacks jurisdiction to issue injunctive relief against it. Even if Swan could serve  
6 Proton, Proton is not subject to personal jurisdiction, general or specific. Swan’s  
7 Complaint does not include a single allegation in support of general jurisdiction but  
8 instead attempts to hang its hat on specific jurisdiction over Proton using the  
9 following conclusory allegations: (1) Proton “purposefully directed unlawful  
10 activities toward California,” (¶ 26) and (2) co-defendant Michael Alexander  
11 Holmes, resides in Los Angeles and “on information and belief” he caused Proton’s  
12 incorporation documents to be filed in the British Virgin Islands. (Complaint, ¶¶  
13 82, 85). Swan cannot meet its burden.

14 The conclusory claim that Proton “[p]urposely directed unlawful activities”  
15 does not sufficiently describe wrongful acts or Proton’s involvement. Even if it  
16 were true that Proton downloaded confidential trade secrets belonging to Swan—it  
17 has not—Swan has not, and cannot, allege that Proton facilitated, orchestrated, or  
18 participated in the theft of confidential and proprietary information by former Swan  
19 employees—i.e., Proton did not participate in an activity in California that can  
20 establish personal jurisdiction. *See Prevail Legal Inc. v. Gordon*, No. 20-cv-07173-  
21 BLF, 2021 U.S. Dist. LEXIS 92675 (N.D. Cal. May 14, 2021) (allegations that  
22 defendants knew plaintiff located in California and improperly downloaded  
23 plaintiff’s proprietary information from server in California insufficient to establish  
24 personal jurisdiction over defendants).

25 And, the vague allegation that Mr. Holmes caused Proton’s incorporation  
26 documents to be filed likewise sheds no light on whether Proton had minimum  
27 contacts with California. The act of “causing documents to be filed” could mean  
28 anything, including acts so innocuous and tenuous they could never support personal

1 jurisdiction. Because Swan has failed to make a prima facie showing that Proton is  
2 subject personal jurisdiction in California, this Court may not issue injunctive relief  
3 against it. *Zepeda*, 753 F.2d at 727.

4 **B. Ex parte relief for a TRO is not warranted or necessary.**

5 Even if this Court determines Proton is subject to its jurisdiction for the  
6 purpose of a TRO, the ex parte application should be denied. It has long been  
7 recognized that “[e]x parte temporary restraining orders . . . run[] counter” to the  
8 notion that underlies “our entire jurisprudence”—that there be no court action  
9 “before reasonable notice and an opportunity to be heard has been granted both  
10 sides of a dispute.” *See Granny Goose Foods, Inc. v. Bhd. of Teamsters and Auto*  
11 *Truck Drivers*, 415 U.S. 423, 439 (1974). Accordingly, **there are “very few**  
12 **circumstances justifying the issuance of an ex parte TRO.”** *Reno Air Racing*  
13 *Ass’n., v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (emphasis added)  
14 (explaining that ex parte orders are only proper when “notice to the defendant would  
15 render fruitless the further prosecution of the action”).

16 1. **Misappropriation.**

17 Injunctive relief against Proton’s use of Swan’s alleged confidential and  
18 proprietary information is unwarranted. Allegations that an employee’s retaining  
19 materials is not sufficient evidence of trade secret misappropriation. The Defend  
20 Trade Secrets Act authorizes courts to grant injunctive relief to prevent *actual or*  
21 *threatened* trade secret misappropriation. 18 U.S.C. § 1836(b)(3)(A) (emphasis  
22 added). Mere possession of trade secrets by departing employees cannot establish  
23 actual or threatened misappropriation. *Thomas v. Starz Entm’t LLC*, No. 2:15-cv-  
24 09239-CAS(AFMx), 2016 U.S. Dist. LEXIS 93177, at \*16-17 (C.D. Cal. Jul. 11,  
25 2016) (“generalized concerns and assertions that an individual ‘could’  
26 misappropriate trade secrets after changing jobs cannot give rise to a reasonable  
27 suspicion of an UTSA violation”). Here, while there are specific allegations relating  
28 to the alleged theft of Swan’s supposed trade secrets, there are only vague and



1 allegations and generalized speculation that Proton itself is using, or plans to use,  
2 the information.

3 Injunctive relief is also not necessary. Courts have consistently held that  
4 injunctions must be specific and not simply command a party to obey the law. *See*  
5 *Brady v. United of Omaha Life Ins. Co.*, 902 F. Supp. 2d 1274, 1284 (N.D. Cal.  
6 2012) (“Broad language in an injunction that essentially requires a party to obey the  
7 law in the future is not encouraged and may be struck from an order for injunctive  
8 relief.”) (citation omitted); *Winters v. Jordan*, 2010 U.S. Dist. LEXIS 72682, \*43  
9 (E.D. Cal.) (Jul. 20, 2010) (the court noted that blanket injunctions to obey the law  
10 are disfavored and should be dismissed). Here, the proposed TRO, which has  
11 extremely broad misappropriation language, is unnecessary because it simply  
12 commands Proton to obey the law. And Proton is already doing so.

13 2. Preservation of Evidence.

14 Swan seeks an ex parte order from this court that “Defendants are hereby  
15 required to immediately take steps to preserve all evidence relevant to the  
16 Complaint.” The order is not necessary given preservation is mandated by law.  
17 *Ryan v. Editions Ltd. West, Inc.*, 786 F.3d 754, 766 (9th Cir. 2015) (A party’s duty  
18 to preserve begins when it has “some notice that the [evidence is] potentially  
19 relevant to the litigation.”) Moreover, the order is not warranted given there are no  
20 allegations suggesting that Proton has destroyed, or would destroy, evidence.

21 “To justify an ex parte proceeding [on destruction of evidence grounds], the  
22 applicant must do more than assert that the adverse party would dispose of evidence  
23 if given notice.” *Reno Air*, 452 F.3d at 1131 (internal quotation marks and citation  
24 omitted). Instead, “[p]laintiffs must show that defendants would have disregarded a  
25 direct court order and disposed of the goods within the time it would take for a  
26 hearing . . . [and] **must support such assertions by showing that the adverse**  
27 **party has a history of disposing of evidence or violating court orders** or that  
28

1 persons similar to the adverse party have such a history.” *Id.* (internal quotation  
2 omitted) (emphasis added).

3 Here, Swan failed to, and cannot, make the required showing that Proton or  
4 its co-defendants have a history of destroying evidence or violating court orders,  
5 which is required to justify an ex parte TRO. Instead, Swan merely “anticipates that  
6 Defendants will seek to further cover their tracks and evade detection, given their  
7 track record of concealment and deceit.” Swan does not offer specific facts  
8 regarding defendants’ alleged “concealment and deceit,” because there are none.  
9 Moreover, **Swan fails to make a single allegation that Proton or its co-defendant**  
10 **disposed of evidence or violated court orders.** (*See, e.g.,* Declarations of Yan  
11 Pritzker and Cory Klippsten (Doc. 11-1; 11-2)). Instead, the gist of Swan’s  
12 allegations is that Proton’s co-defendants (and *not* Proton) downloaded proprietary  
13 information from a California server, including intellectual property, that Proton is  
14 using outside of California to the detriment of Swan—but these allegations, which  
15 Proton strongly contests, do not suggest that Proton or its co-defendants are likely to  
16 destroy evidence or defy this Court.

17 The alleged facts before this Court are easily distinguished from those in the  
18 cases cited by Swan wherein the courts granted ex parte applications for a TRO. In  
19 *OOO Brunswick Rail Mgmt. v. Sultanov*, No. 5:17-cv-00017-EJD, 2017 U.S. Dist.  
20 LEXIS 2343, at \*3, 7 (N.D. Cal. Jan. 6, 2017), a TRO was granted after former  
21 employees sent confidential information to third parties, then deleted the sent  
22 messages and emptied the trash folder, and refused to return a company issued  
23 laptop and mobile phone. In *Comet Techs. USA Inc. v. Beuerman*, No. 18-CV-  
24 01441-LHK, 2018 U.S. Dist. LEXIS 224356, at \*4 (N.D. Cal. Mar. 15, 2018), a  
25 TRO was issued after a defendant lied in his exit interview about both downloading  
26 confidential data and that he was leaving to work for plaintiff’s competitor. **Here,**  
27 **there is not a single allegation that: Proton or its co-defendants tried to cover**  
28 **their tracks after allegedly downloading information, they lied to Plaintiff**



1 **about downloading information, or they have already destroyed information.**

2 Because Swan offered no allegations indicating Proton and its co-defendants will  
3 destroy evidence or fail to follow an order of this Court, the ex parte application  
4 should not be granted.

5 **IV. SERVICE BY EMAIL IS NOT WARRANTED**

6 To establish service under alternative means under Federal Rule of Civil  
7 Procedure 4(f)(3), the plaintiff must meet three requirements: (1) the requested  
8 means of service “must not be prohibited by international agreement”; (2) it “must  
9 comport with constitutional notions of due process”; and (3) “the facts and  
10 circumstances of the present case *necessitate*[ ] the district court’s intervention.” *Rio*  
11 *Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1015-1016 (9th Cir. 2002)  
12 (emphasis added). It is within “the discretion of the district court to balance the  
13 limitations of email service against its benefits in any particular case.” *Id.* at 1018;  
14 *Microsoft Corp. v. Buy More, Inc.*, 703 F. App’x 476, 480 (9th Cir. 2017).

15 Plaintiff has not established that the circumstances here *necessitate* service  
16 via email. While a plaintiff seeking the court’s permission to serve under Federal  
17 Rule of Civil Procedure 4(f)(3) “need not have attempted *every* permissible means  
18 of service of process before petitioning the court for alternative relief,” *Rio Props*,  
19 284 F.3d at 1016, in nearly all cases cited by Swan, the plaintiff made at least *some*  
20 effort to serve process under traditional means. *Thunder Studios, Inc. v. Kazal*, No.  
21 CV 17-00871-AB (SSx), 2017 U.S. Dist. Lexis 233877, at \*4-5 (C.D. Cal. May 26,  
22 2017) (authorizing alternative service where plaintiff made multiple attempts at  
23 service by a licensed process server in defendant’s home country for nearly two  
24 months); *Amazon.Com Inc. v. Awns*, No. C22-402-MLP, 2023 U.S. Dist. LEXIS  
25 61770, at \*5 (W.D. Wash. Apr. 7, 2023) (authorizing alternative service where  
26 plaintiff diligently attempted to locate the defendants’ addresses and was unable to  
27 do so); *Vines of Argentina, LLC v. Argentina*, No. 2:22-cv-1619, 2024 U.S. Dist.  
28 LEXIS 165563, at \*3–4 (W.D. Wash. Sept. 13, 2024) (authorizing alternative

1 service only after staying case to allow time for service under Hague Convention  
2 and plaintiff diligently attempted service for 21 months); *Active Sports Lifestyle U.S.*  
3 *v. Apparel Prods. Servs. Global* No. CV 20-020056 PA (JCx), 2020 U.S. Dist.  
4 LEXIS 153782, at \*2-3 (C.D. Cal. July 2, 2020) (authorizing alternative service  
5 where plaintiffs attempted to serve defendant under the Hague Convention for  
6 several months and attempted service through court clerk); *see also Microsoft Corp.*,  
7 703 Fed. Appx. at 480 (affirming service by alternative means where plaintiff  
8 “presented the district court with evidence that it diligently attempted to serve  
9 [defendant] in the United States before filing the motion for alternative service”).  
10 This is true even for cases of “urgency” Plaintiff relies on. *Lonati v. Soxnet, Inc.*,  
11 No. CV 20-5539-GW-JPRx, 2021 U.S. Dist. LEXIS 263356, at \*5-6 (C.D. Cal.  
12 Sept. 20, 2021) (authorizing alternative service where plaintiff attempted to serve  
13 defendant via the Hague Convention but had not received confirmation after over a  
14 year); *Deo Sung Hi Tech., Ltd. v. Gthunder*, No. CV 18-7884 PSG (MAAx), 2019  
15 U.S. Dist. LEXIS 238431, at \*2 (C.D. Cal. Apr. 17, 2019) (authorizing alternative  
16 service where “Plaintiffs explained that despite their due diligence, they have not yet  
17 been able to serve Defendant” for months after complaint filed).<sup>5</sup>

18 Indeed, in *Rio*, the Ninth Circuit determined that the circumstances of that  
19 case necessitated alternative service where the plaintiff “presented the district court  
20 with its inability to serve an elusive international defendant, striving to evade  
21 service of process.” *Rio Props*, 284 F.3d at 1016.

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22  
23  
24 <sup>5</sup> While the Plaintiff in *WeWork Cos. Inc. v. WePlus (Shanghai) Tech. Co.*, No.  
25 5:18-cv-04543-EDJ, 2019 U.S. Dist. LEXIS 5047 (N.D. Cal. Jan. 10, 2019) does not  
26 appear to have attempted to serve the defendant, there the court determined that the  
27 allegations demonstrated defendants were actively deceiving consumers, thereby  
28 damaging plaintiff’s reputation, but here Swan has alleged only that Proton is  
continuing to manage the operational and administrative functions for 2040 Energy  
re, thereby *enhancing* the value of the entity in which Swan owns a minority equity  
stake. Compl. ¶¶ 104, 107.

1 Here, Plaintiff has not even attempted to serve Proton or any other defendant  
2 by *any* traditional means (not even the one defendant residing in California), let  
3 alone established that it will be unable to do so. To the contrary, despite knowing  
4 the defendants, communicating with them within the last two months, and having  
5 their physical addresses, it appears that Swan was going to attempt to sue the  
6 defendants, obtain a TRO and expedited discovery without notice to defendants, and  
7 then get court approval to serve via email the complaint, a TRO, and expedited  
8 discovery all before ever even notifying any of the defendants. Indeed, counsel for  
9 Swan admitted as much. (Trigg Decl. ¶ 3.)

10 **V. CONCLUSION**

11 Swan's ex parte applications should be denied because of lack of jurisdiction  
12 over Proton. Their applications are also unwarranted and premature. At the very  
13 least, this Court should continue the hearing on Swan's applications until after  
14 jurisdiction over Proton is established. Additionally, the Court should deny Swan's  
15 application for alternative service.

16 Dated: September 30, 2024 BERGESON LLP

17  
18  
19 By: 

Adam C. Trigg

20 Attorneys for Defendant PROTON  
21 MANAGEMENT LTD.  
22  
23  
24  
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26  
27  
28

**CERTIFICATE OF SERVICE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Santa Clara, State of California. My business address is 111 N. Market Street, Suite 600, San Jose, CA 95113.

On September 30, 2024, I served true copies of the following document(s) described as:

**DEFENDANT PROTON'S SPECIAL APPEARANCE TO OPPOSE PLAINTIFF'S *EX PARTE* APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER WITHOUT NOTICE, AN ORDER THAT PLAINTIFFS MAY SERVE DEFENDANTS VIA EMAIL AND AN ORDER FOR EXPEDITED DISCOVERY**

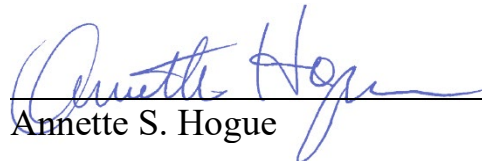
on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 30, 2024, at San Jose, California.

  
Annette S. Hogue

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